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IN THE SUPREME COURT OF THE UNITED STATES OF AMERICA

LEONIDES THOMAS ELLIOTT,

Petitioner

vs.

UNITED STATES OF AMERICA,

Defendant

NUMBER 472

IN THE SUPREME COURT
OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

COMES NOW, the Petitioner in the above matter and showeth that:

1.

In Case Number 28978, United States Court of Appeals for the Fifth Circuit, said Court found against your Petitioner and upheld his conviction and sentence of two years in prison. A copy of said decision is attached hereto as Exhibit 1.

2.

The jurisdiction is invoked under Rule 19 of this Court and on the ground that the United States Court of Appeals for the Fifth Circuit has decided an important question of Federal law which has not been, but should be, settled by this Court.

3.

The date of the judgment entered in said case was May 28, 1970.

The date of the order respecting the Rehearing was June 29, 1970, when the Rehearing was denied. (See Exhibit

"All I got the record was "Hell," I don't get in the business mean . . . because they objected or do anything like . . . ", because the statement of Government counsel indicated that he had a definite opinion anticipated that the Government agents had been in the business and charged the defendant. There is elementary that Government counsel has no right to state his opinion as to the evidence or make a statement which indicates that he has knowledge of the evidence exists to what the evidence is. The accused the Government counsel testifying without being under oath because of this the motion for mistrial should have been granted, especially since Judge Beezie did not instruct the jury that they should disregard this statement by Government counsel.

1(m). That trial judge erred when he charged as follows:

"In all cases of this kind I want it in this case, we speak upon the trial with the impression that the defendant is innocent. All of us are surrounded by that

The statutory provision or other provisions believed to control jurisdictional questions. Court 18 Rule 12, of this Court and the Fourth, Fifth and Fourteenth Amendments the United States Constitution.

The questions presented for review are as follows:

1(a). The Court erred in failing to grant a mistrial on motion of the defendant when the Assistant District Attorney stated to the hearing of prospective jurors that the defendant is innocent. All of us are surrounded by that

2(c). In the Second Count of Appeal No. 1 the Appellant complains that the Learned Trial Judge misdirected himself in law in that he failed to direct himself that the offence of Robbery with Violence, the offence of the Charge, is a felony which involves violence and as such it is not only the Complainant who can be a victim but also any other person who is present at the time the offence is committed. The Appellant submits

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[illegible] to objection, Mr. Sherer?

MR. SCOTT: Yes, sir. I don't see why they need the rest of the name.

MR. BARNES: Well, I don't get in the middle and chase people or do anything like . . .

MR. SCOTT: Now, if it please . . .

MR. KNOX: . . . I just think I'd like to have them watch me at the counsel table just like Mr. Scott wants his client to assist him.

MR. SCOTT: If your Honor please, I would like to make a motion outside of the presence of the jury.

THE COURT: All right, let the jury retire so that you can be heard a few minutes and be comfortable.

(Jury retired at 11:15).

MR. SCOTT: If your Honor please, we have for a mistrial on the grounds that the statement made by the Assistant United States Attorney was inflammatory when he stated, "I don't get in the middle of chase people," and that was done in the presence of the jury. I think it is prejudicial. It has violated the defendant's rights, and he cannot get a fair trial after the jury has heard by the United States Attorney, that we move for a mistrial on behalf of Thomas Eubanks Hilbert.

THE COURT: What do you say to that, Mr. District Attorney?

MR. KNOX: Your Honor, I don't think it quite that inflammatory or prejudicial. The Government was merely trying to make the point that the attorney who is on the circuit will not always have some of the background on a case that he knows what he needs some one to counsel with to assist him during the proceedings. I was merely making that point. We don't believe that counsel has shown the absolute prejudice in this statement that he has to make a mistrial.

THE COURT: Alright sir. I overrule the objection. You think you need one agent at the table with you?

MR. MURPHY: Yes Sir, I do.

THE COURT: All right, I'll let the agent...

MR. SCOTT: Let the record show that it is over our objection, Your Honor."

After conclusion of evidence, argument, the defendant was found guilty on both counts.

3.

A review of a judgment of a federal court rendered and the basis for the federal jurisdiction in the first instance is that the charge given by Judge W. W. Allgood violates Petitioner's rights under the Fourteenth Amendment to the Constitution of the United States in that it places the burden upon the defendant to prove the defendant's innocence or the defendant to carry from defendant, innocently, the mantle of innocence. Taylor vs. Bennett, 305 U.S. 253.

4.

Appended to the petition is a copy of the opinion delivered by the United States Court of Appeals for the Fifth Circuit.

WHEREFORE, Petitioner prays that the Court grant the writ of Certiorari and reverse the judgment of the United States Court of Appeals for the Fifth Circuit.

SCOTT & ALEXANDER

BY: _____
Attorneys for Petitioner

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Athens, Georgia 30601
Tel. 543-9820

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IN THE

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 28978

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

REDADELL THOMAS ELLIOTT,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Georgia

((and No. 28970))

ON PETITION FOR REHEARING

(Before BROWN, Chief Judge, WISDOM and RUBIN, Circuit Judges.)

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby DENIED.

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OCT 1970
CLERK

No. 473

In the Supreme Court of the United States

October Term, 1970

[redacted]

v.

[redacted]

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE [redacted] CIRCUIT

[redacted]

[redacted]

[redacted]

[redacted]

In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 472

ZEBADEE THOMAS ELLIOTT, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner was convicted in the Middle District of Georgia of carrying on the business of a distiller without giving bond, in violation of 26 USC 5601(a)(4), and was sentenced to two years' imprisonment. His conviction was affirmed on appeal (Pet. Ex. 1) and a petition for rehearing was denied (Pet. Ex. 2).

Petitioner raises here the same issues decided against him by the court of appeals. He reasserts that the prosecutor's remarks during a colloquy as to whether an agent should be permitted to sit at the counsel table warranted granting his motion for mistrial. Also, he again argues that the judge gave an erroneous jury charge on the presumption of innocence. For the reasons stated in the opinion below,

402-896—70

on which we rely here, neither of these contentions has merit.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

SEPTEMBER 1970.

U. S. GOVERNMENT PRINTING OFFICE: 1970